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Attorneys for Plaintiffs:  
NAME INTELLIGENCE, INC. AND  
JAY WESTERDAL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

NAME INTELLIGENCE, INC., a  
Washington corporation; and JAY  
WESTERDAL, an individual,

Plaintiffs,

vs.

LAUHLIN MCKINNON, an  
individual; JEFF EHLERT, an  
individual; MICHAEL VANNOZZI,  
an individual; CHARLES J.  
LYBARGER, an individual,

Defendants.

Case No. 2:10-cv-01202-RCJ-GWF

THIRD AMENDED COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. BREACH OF FIDUCIARY DUTIES;
3. ACCOUNTING;
4. VIOLATION OF THE SECURITIES  
ACT OF WASHINGTON – SALE OF  
UNREGISTERED SECURITIES; AND
5. VIOLATION OF THE SECURITIES  
ACT OF WASHINGTON –  
FRAUDULENT ACTS AND OTHER  
PROHIBITED PRACTICES.
6. QUIET TITLE
7. RESPONDEAT SUPERIOR
8. CONVERSION

//

1 Plaintiffs Name Intelligence, Inc. ("Name Intelligence") and Jay  
2 Westerdal ("Westerdal") (collectively "Plaintiffs"), hereby allege as follows:

### 3 INTRODUCTION

4 1. This case involves blatant breaches of contract, breaches of  
5 fiduciary duties, violations of the Washington State Securities Act (RCW  
6 21.20 et seq.), and conversion by Defendants Lauchlin McKinnon  
7 ("McKinnon") and Jeff Ehlert ("Ehlert") (together "Defendants"). McKinnon  
8 and Ehlert convinced Name Intelligence and Westerdal to invest funds by  
9 assuring them that their new business would profit immensely from acquiring  
10 and selling foreclosed real estate. None of McKinnon and Ehlert's assurances  
11 proved to be true. Rather, McKinnon and Ehlert materially misrepresented  
12 and omitted key information about their plans. Following the cash investment  
13 by Name Intelligence and Westerdal into the new business, McKinnon and  
14 Ehlert immediately commenced business dealings without the consent of  
15 Westerdal and Name Intelligence, misappropriated and commingled funds,  
16 and made decisions with complete disregard to the interests of other business  
17 partners. Despite requests from Westerdal and Name Intelligence, McKinnon  
18 and Ehlert failed to provide promised documentation and failed to provide an  
19 accounting of business funds and assets. Name Intelligence and Westerdal  
20 have suffered untold damage by virtue of these contractual breaches, breaches  
21 of fiduciary duties, and violations of the Washington State Securities Act.

### 22 JURISDICTION, VENUE, AND APPLICABLE LAW

23 2. Jurisdiction is proper under 28 U.S.C. § 1332(c) because  
24 Plaintiffs and Defendants are citizens of different states and the amount in  
25 controversy exceeds \$75,000 exclusive of interest and costs.

26 3. Venue is proper in this court pursuant to 28 U.S.C. § 1391(2) as  
27 the Defendants reside in this district and part of the events or omissions giving  
28 rise to this action occurred within this district.



1           13. On or around May 21, 2010, Name Intelligence, Westerdal, and  
2 McKinnon met in Mercer Island, WA and agreed to proceed with the Business  
3 on a profit sharing model of 75% to Name Intelligence and 25% to McKinnon.  
4 Name Intelligence would provide all funds necessary to begin operations and  
5 such funds would be paid back to Name Intelligence prior to the disbursement  
6 of any funds to other investors.

7           14. During this meeting, McKinnon represented and guaranteed a  
8 40% annual return to Name Intelligence on the funds invested in the Business.

9           15. Throughout these negotiations, Ehlert and McKinnon,  
10 represented to Name Intelligence and Westerdal that their financial  
11 investments would be used to purchase real property at foreclosure sales and  
12 the proceeds of each subsequent sale would be delivered to Name Intelligence  
13 with profits (if any) distributed to Name Intelligence and McKinnon based on  
14 an agreed upon percentage share of the profits.

15           16. On or around June 1, 2010, Name Intelligence and Westerdal  
16 provided Ehlert and McKinnon with \$700,000.00 in cashier's checks to begin  
17 operating the Business.

18           17. On or around June 3, 2010, Ehlert and McKinnon purchased the  
19 first piece of real property at a trustee's sale on behalf of the Business. This  
20 property is located at 9340 Copper Bay Avenue, Las Vegas, NV 89129.

21           18. On or around June 7, 2010, Ehlert and McKinnon purchased the  
22 real properties located at 539 Queens Borough Ave, Las Vegas, NV 89113,  
23 5320 Dawes Ct, Las Vegas, NV 89110, and 5386 Lindsay Heights St, Las  
24 Vegas, NV 89148 at a trustee's sale on behalf of the Business.

25           19. That same day, McKinnon contacted Westerdal while in the State  
26 of Washington and requested that Name Intelligence provide additional capital  
27 to the Business.

28

1           20. On or around June 8, 2010, Ehlert and McKinnon purchased the  
2 real properties located at 9402 Blacktail Fork Street, Las Vegas, NV 89113,  
3 5908 Soaring Bluff Street, Las Vegas, NV 89031, and 744 Jacaranda Leaf  
4 Street, Las Vegas, NV 89139 at a trustee's sale on behalf of the Business.

5           21. On or around June 10, 2010, Name Intelligence and Westerdal  
6 provided Ehlert and McKinnon with an additional \$1,000,000.00 in cashier's  
7 checks to continue operating the Business.

8           22. Based on information and belief, Ehlert and McKinnon used  
9 some of remaining funds from the \$1,000,000.00 to purchase additional  
10 foreclosed properties for the Business.

11           23. On or around June 15, 2010, Ehlert and McKinnon ceased  
12 virtually all communication with Name Intelligence and Westerdal. Name  
13 Intelligence and Westerdal immediately objected to the Business proceeding  
14 and requested that operations of the Business cease.

15           24. Despite objections from Name Intelligence and Westerdal, Ehlert  
16 and McKinnon continued to operate the Business.

17           25. On or around June 25, 2010, Name Intelligence and Westerdal  
18 requested an accounting of the Business, funds expensed to date, and  
19 documentation real property purchased.

20           26. To date, Ehlert and McKinnon have refused to provide an  
21 accounting or complete documentation to confirm the activities of the  
22 Business.

23           27. To date, Ehlert and McKinnon have refused to return the entirety  
24 of the capital investment, cash infusion, and / or investment funds of Name  
25 Intelligence. It remains unclear where the remaining funds are currently held  
26 and / or invested.

27           28. Based on information and belief, some of the purchased  
28

1 properties for the Business do not exist or were purchased and title put in the  
2 name of Defendant Ehlert, his personal business entity, and / or a name other  
3 than that of Name Intelligence or the Business.

4 29. Based on information and belief, most or all of Name Intelligence  
5 and Westerdal's funds were commingled rather than separated by LLC,  
6 another business entity, and / or real estate project.

7 30. Based on information and belief, some of the funds were not  
8 placed in an account held by the Business, but were instead placed in personal  
9 accounts of Ehlert and / or McKinnon and the trust account of Charles  
10 Lybarger, an attorney representing the Business, partnership, real estate  
11 enterprise, Ehlert and / or McKinnon.

12 31. Based on information and belief, Charles Lybarger distributed  
13 Name Intelligence and Westerdal's funds from his trust account to himself,  
14 Ehlert and / or McKinnon.

15 32. Based on information and belief, Ehlert and McKinnon were  
16 aware that the business entities and / or some of the real property did not exist  
17 and continued to use Name Intelligence and Westerdal's funds to purchase  
18 further property despite Name Intelligence and Westerdal's repeated  
19 objections.

20 33. Name Intelligence and Westerdal reasonably relied on the  
21 accuracy of Ehlert and McKinnon's assurances and representations in  
22 determining whether to invest, participate, and / or partner in the Business.

23 34. Based on information and belief, Ehlert and McKinnon used  
24 Name Intelligence and Westerdal's funds for improper corporate and personal  
25 uses.

26 35. Name Intelligence and Westerdal principally invested  
27 \$1,700,000.00 into one or more of the business entities, Ehlert and / or  
28

McKinnon.

36. Based on information and belief, Ehlert and McKinnon are currently unable to account for any of Name Intelligence and Westerdal's outstanding principal investments.

### FIRST CAUSE OF ACTION

#### (Breach of Contract)

The allegations of Paragraphs 1 through 36 are incorporated herein by reference.

37. Plaintiffs have complied with and fully performed their obligations, conditions, covenants and promises required pursuant to the agreement with Defendants to commence, invest, partner, and / or form the Business (the "Agreement").

38. Defendants have breached their contractual obligations under the Agreement by, among other things:

- a. Misrepresenting or omitting material information concerning the operations of the Business;
- b. Failing to disclose potential risks and liabilities concerning the operations of the Business;
- c. Failing to properly account for or provide an accounting of the investment funds of Name Intelligence;
- d. Hiring employees and / or contractors for the Business without the consent or authority;
- e. Purchasing and selling or attempting to sell real property for the Business without the consent or authority;
- f. Misappropriating the investment funds of Name Intelligence; and
- g. Failing to disburse business, investment, and / or partnership funds according to the agreed upon percentage profit split.

1        39. As a direct and proximate result of the aforementioned wrongful  
2 acts of McKinnon and Ehlert, Name Intelligence and Westerdal have suffered,  
3 and continue to suffer, damages including, but not limited to, interest and  
4 other incidental and consequential damages in an amount to be proven at trial.

5                                **SECOND CAUSE OF ACTION**

6                                **(Breach of Fiduciary Duties – RCW 25.05.165)**

7        The allegations of Paragraphs 1 through 39 are incorporated herein by  
8 reference.

9        40. As a partner in the Business, Ehlert and McKinnon owed and  
10 continue to owe fiduciary duties to Name Intelligence, Westerdal, and the  
11 Business, including the duties of loyalty, good faith, fair dealing, and due care.

12        41. By virtue of their misconduct as herein described, Ehlert and  
13 McKinnon violated and breached their fiduciary duties of loyalty, good faith,  
14 fair dealing, and due care they owed to Name Intelligence, Westerdal, and the  
15 Business.

16        42. Ehlert and McKinnon's misconduct as herein described was not,  
17 and could not have been, reasonably believed to be in the best interests of the  
18 Business, and was done solely for the benefit and enrichment of Ehlert and  
19 McKinnon.

20        43. As a direct and proximate result of the aforementioned wrongful  
21 acts of McKinnon and Ehlert, Name Intelligence, Westerdal, and the Business  
22 have suffered, and continue to suffer, damages including, but not limited to,  
23 interest and other incidental and consequential damages in an amount to be  
24 proven at trial.



**THIRD CAUSE OF ACTION**

**(Accounting – RCW 25.05.170)**

The allegations of Paragraphs 1 through 43 are incorporated herein by reference.

44. As part of the Agreement, Name Intelligence has an outstanding principal investment totaling \$1,700,000.00 into one or more of the business entities, Ehlert, and / or McKinnon in furtherance of the Business.

45. Plaintiffs are entitled to an Accounting to determine where these funds are and / or were held and / or are invested.

46. Plaintiffs seek an Order from the Court for such an accounting, access to the books, records, and financial information of the Business, Ehlert, McKinnon, and / or any business entity formed as part of the Business.

**FOURTH CAUSE OF ACTION**

**(Violation of RCW 21.20.140 of The Securities Act of Washington –  
Sale of Unregistered Securities)**

The allegations of Paragraphs 1 through 46 are incorporated herein by reference.

47. Based on information and belief, the securities sold by McKinnon and Ehlert were not properly registered with the Securities and Exchange Commission or the State of Washington.

48. Based on information and belief, the securities sold by McKinnon and Ehlert were not exempt from registration with the State of Washington.

49. As a direct and proximate result of the aforementioned wrongful acts of McKinnon and Ehlert, Name Intelligence and Westerdal have suffered, and continue to suffer, damages including, but not limited to, interest and other incidental and consequential damages in an amount to be proven at trial.

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**FIFTH CAUSE OF ACTION**

**(Violation of RCW 21.20.140 of The Securities Act of Washington –  
Fraudulent Acts and Other Prohibited Activities)**

The allegations of Paragraphs 1 through 49 are incorporated herein by reference.

50. Based on information and belief, McKinnon and Ehlert made material misstatements and omissions to the investors, Name Intelligence and Westerdal.

51. Based on information and belief, McKinnon and Ehlert failed to disclose potential risks and liabilities to the investors, Name Intelligence and Westerdal.

52. As a direct and proximate result of the aforementioned wrongful acts of McKinnon and Ehlert, Name Intelligence and Westerdal have suffered, and continue to suffer, damages including, but not limited to, interest and other incidental and consequential damages in an amount to be proven at trial.

**SIXTH CAUSE OF ACTION**

**(Quiet Title – N.R.S. 11.020-11.050)**

The allegations of Paragraphs 1 through 52 are incorporated herein by reference.

53. That to prevent future disputes and to clear title once and for all to Plaintiffs' names, Plaintiffs have asserted this Quiet Title action.

54. That Plaintiffs, by way of this action to quiet title under N.R.S. 11.020-11.050, seek an order of the court quieting record title into the names of Name Intelligence, Inc. and Jay Westerdal, as to:

a. 9340 Copper Bay Avenue, Las Vegas, NV 89129

APN: 138-07-513-018

b. 539 Queensborough Avenue, Las Vegas, NV 89113

- 1 APN: 176-18-510-090  
2 c. 5320 Dawes Court, Las Vegas, NV 89110  
3 APN: 140-33-210-041  
4 d. 5386 Lindsay Heights Street, Las Vegas, NV 89148  
5 APN: 163-30-714-068  
6 e. 9402 Blacktail Fork Street, Las Vegas, NV 89113  
7 APN: 176-21-716-029  
8 f. 5908 Soaring Bluff Street, Las Vegas, NV 89031  
9 APN: 124-29-712-050  
10 g. 7448 Jacaranda Leaf Street, Las Vegas, NV 89139  
11 APN: 176-12-110-053  
12 h. 9354 Fort Lincoln Avenue, Las Vegas, NV 89178  
13 APN: 176-20-313-002  
14 i. 8577 Bolton Court, Las Vegas, NV 89113  
15 APN: 163-29-515-028  
16 j. 9324 Mountain Range Avenue, Las Vegas, NV 89129  
17 APN: 138-07-613-023  
18 k. 3728 Robert McQuire Court, Las Vegas, NV 89129  
19 APN: 137-12-613-030  
20 l. 6643 West Tropicana Avenue, #203, Las Vegas, NV  
21 89103  
22 APN: 163-26-111-065  
23 m. 5822 Gentle Slope, Henderson, NV 89011;  
24 APN: 161-34-513-012

17 55. That Defendants, all persons unknown claiming any right, title,  
18 estate, lien, or interest in the subject real property described in the complaint  
19 adverse to Plaintiffs' interest, have not asserted an interest, but may claim an  
20 interest in the subject real property.

21 56. The claims of all unknown Defendants, if any, are without rights  
22 in the subject real property, whatsoever, and said unknown Defendants have  
23 no estate, mortgage, title or interest in the subject real property, land or  
24 premises or any part thereof.

**SEVENTH CAUSE OF ACTION**  
**(Respondeat Superior – Vicarious Liability**  
**as to Defendant Michael Vannozzi)**

The allegations of Paragraphs 1 through 56 are incorporated herein by reference.

57. Michael Vannozzi was the broker of record for at least seven (7) of the properties that Defendant Ehlert listed which were purchased using the Plaintiffs' monies.

58. Defendant Vannozzi, as the broker of record, is vicariously liable for acts that Defendant Jeff Ehlert committed in the course and scope of his activity as a real estate licensee.

59. As a direct and proximate result of the aforementioned wrongful acts of Defendant Vannozzi, Name Intelligence and Westerdal have suffered, and continue to suffer, damages including, but not limited to, interest and other incidental and consequential damages in an amount to be proven at trial.

**EIGHTH CAUSE OF ACTION**  
**(Conversion – As to Lybarger, Ehlert and McKinnon)**

The allegations of Paragraphs 1 through 59 are incorporated herein by reference.

60. Defendant Lybarger accepted funds from Defendant Ehlert and / or McKinnon which belonged to Plaintiffs and deposited said funds into his trust account.

61. Defendant Lybarger was notified by Plaintiffs that the funds contained in his trust account belonged to Plaintiffs and that there was a dispute between Plaintiffs and Defendants regarding the use of said funds.

62. Defendants Ehlert and McKinnon also were aware that the funds in Lybarger's account and / or their personal accounts belonged to Plaintiffs and that there was a dispute over the use of said funds.

1       63. In spite of their knowledge regarding the ownership of the funds  
2 and the dispute over the use of said funds, the Defendants wrongfully  
3 converted the funds belonging to the Plaintiffs.

4       64. Specifically, Defendant Lybarger took a draw from the funds in  
5 his trust account and distributed a portion to himself and a portion to  
6 Defendant Ehlert.

7       65. Upon information and belief, Defendant Lybarger may have  
8 distributed the funds to Defendant McKinnon as well.

9       66. As a direct and proximate result of the aforementioned wrongful  
10 acts of Lybarger, McKinnon and Ehlert, Name Intelligence and Westerdal  
11 have suffered, and continue to suffer, damages including, but not limited to,  
12 interest and other incidental and consequential damages in an amount to be  
13 proven at trial.

#### 14                                   **PRAYER FOR RELIEF**

15       WHEREFORE, Plaintiffs pray for judgment as follows:

16       1. Temporary and permanent injunctive relief against Ehlert and  
17 McKinnon and that Ehlert and McKinnon their officers, agents  
18 representatives, servants, employees, attorneys, successors and assigns, and all  
19 others in active concert and/or participation with Defendant, be enjoined and  
20 restrained from:

21               a. Continuing to violate fiduciary duties owed by Ehlert and  
22 McKinnon to Name Intelligence, Westerdal, and the Business;

23               b. Continuing to unjustly enrich Ehlert and McKinnon at the  
24 expense of Name Intelligence and Westerdal;

25               c. Continuing to take action on behalf of the Business without  
26 proper corporate and / or partnership authority;

27               d. Assisting, aiding, or abetting any other person or business  
28 in engaging in or performing any of the activities referred to in

1 Paragraphs a. and b. above; and

2 2. Judgment in favor of Plaintiffs as to all claims;

3 3. For an order quieting record title to the subject properties at issue  
4 into the names of Name Intelligence, Inc. and Jay Westerdal, as to:

5 a. 9340 Copper Bay Avenue, Las Vegas, NV 89129

6 APN: 138-07-513-018

7 b. 539 Queensborough Avenue, Las Vegas, NV 89113

8 APN: 176-18-510-090

9 c. 5320 Dawes Court, Las Vegas, NV 89110

10 APN: 140-33-210-041

11 d. 5386 Lindsay Heights Street, Las Vegas, NV 89148

12 APN: 163-30-714-068

13 e. 9402 Blacktail Fork Street, Las Vegas, NV 89113

14 APN: 176-21-716-029

15 f. 5908 Soaring Bluff Street, Las Vegas, NV 89031

16 APN: 124-29-712-050

17 g. 7448 Jacaranda Leaf Street, Las Vegas, NV 89139

18 APN: 176-12-110-053

19 h. 9354 Fort Lincoln Avenue, Las Vegas, NV 89178

20 APN: 176-20-313-002

21 i. 8577 Bolton Court, Las Vegas, NV 89113

22 APN: 163-29-515-028

23 j. 9324 Mountain Range Avenue, Las Vegas, NV 89129

24 APN: 138-07-613-023

25 k. 3728 Robert McQuire Court, Las Vegas, NV 89129

26 APN: 137-12-613-030

27 l. 6643 West Tropicana Avenue, #203, Las Vegas, NV  
28 89103

APN: 163-26-111-065

n. 5822 Gentle Slope, Henderson, NV 89011;

APN: 161-34-513-012

4. That by said decree, it be declared and adjudged that Plaintiffs are  
the sole estate and interest owners of the subject properties, and that  
Defendants have no estate or interest ownership whatsoever, in or to said  
properties and premises;

1           5.     That said unknown Defendants be required to set forth the nature  
2 of their several claims, and that all adverse claims of said unknown  
3 Defendants, if any, may be determined non-existent by a decree of this court;

4           6.     That said unknown Defendants, and each and every one of them,  
5 be forever barred from asserting any claim whatsoever, in or to said properties  
6 and premises adverse to the Plaintiffs;

7           7.     Compensatory damages, as well as all incidental and  
8 consequential damages in an amount to be proven at trial;

9           8.     Exemplary damages according to proof at trial;

10          9.     Prejudgment interest at the rate of 12% per annum on the  
11 investment from the date of transfer of the funds;

12          10.    An award of attorney's fees and costs as authorized by applicable  
13 statutory provisions; and

14          11.    For such other and further relief as the Court deems proper.

15 Dated: January 17, 2012

16  
17                   LAW OFFICES OF P. STERLING KERR  
                  P. STERLING KERR

18                   HOLMQUIST & GARDINER PLLC  
19                   HAMILTON H. GARDINER

20  
21                   By: /s/ P. Sterling Kerr  
                  P. Sterling Kerr  
22                   Nevada State Bar #3978  
                  Attorneys for Plaintiffs  
23                   NAME INTELLIGENCE, INC. AND  
                  JAY WESTERDAL

**CERTIFICATE OF SERVICE**

I hereby certify that on the 17<sup>th</sup> day of January, 2012, I electronically transmitted the THIRD AMENDED COMPLAINT to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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/s/ Lisa Peters

An employee of the LAW OFFICES OF  
P. STERLING KERR



EXHIBIT "B"

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF NEVADA

3 NAME INTELLIGENCE, INC., a )  
Washington corporation; and)4 JAY WESTERDAL, an )  
individual, )5 )  
Plaintiff, )

6 vs. )

No. 2:10-CV-01202-RCJ-GWF

7 LAUCHLIN MCKINNON, an )

8 individual; JEFF EHLERT, an)

individual; MICHAEL )

9 VANNOZZI, an individual, )

10 Defendants. )  
11 \_\_\_\_\_)12  
13 DEPOSITION OF JEFFREY THOMAS EHLERT14  
15 Taken on Wednesday, January 11, 2012

16 At 10:06 a.m.

17 At 2450 St. Rose Parkway

18 Henderson, Nevada

19  
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21  
22  
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24 Reported by: MARY COX DANIEL

CCR 710, FAPR, RDR, CRR, CBC, CCP

1 APPEARANCES:

2 For Plaintiffs Name Intelligence, Inc., and Jay  
3 Westerdal:

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5 BY: P. STERLING KERR, ESQ.  
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9 HOLMQUIST & GARDINER, PLLC  
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14 For Defendant Jeff Ehlert:

15 ADAMS LAW GROUP, LTD.  
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19 Las Vegas, NV 89117

20 For Defendant Michael Vannozzi:

21 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.  
22 BY: STEPHEN G. KEIM, ESQ.  
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24 Suite 100  
25 Las Vegas, NV 89148

For Defendant Lauchlin McKinnon:

DZIMINSKI & ASSOCIATES  
BY: MARK R. SMITH, ESQ.  
2190 East Pebble Road  
Suite 260  
Las Vegas, NV 89123

Also Present: Michael Vannozzi

1 Q What does that mean?

2 A It means we wired back \$180,000 in cash.

3 Q In listing out where the money was, on page 12  
4 of your answers to interrogatories, you state that  
5 \$2,500 of the fund was used by Charles Lybarger was a  
6 draw unrelated to any attorney's fees. What is that?

7 MS. SAYYAR: The only thing I'm going to  
8 caution is if there was any attorney/client privileged  
9 communications with you and Charles, please don't  
10 disclose them, but answer the questions.

11 BY MR. GARDINER:

12 Q Any communications, anything else?

13 MS. SAYYAR: If you have an understanding, you  
14 have to answer.

15 THE WITNESS: Can you repeat the question now?

16 BY MR. GARDINER:

17 Q On page 12 of 19 to your answers to  
18 interrogatories propounded by Name Intelligence, Inc.,  
19 it says, 11, \$2,500 of the fund was used by Charles  
20 Lybarger as a, quote, draw, unquote, unrelated to any  
21 attorney's fees. What is that?

22 A I don't know.

23 Q Did you authorize Mr. Lybarger to take a draw  
24 of \$2,500 from Name Intelligence funds?

25 A Yes.

1 Q What was that \$2,500 for?

2 A I don't know.

3 Q How did you calculate \$2,500 to Mr. Lybarger?

4 A I did not.

5 Q Who did?

6 A Do I answer that?

7 Q If it's a communication, no. If it's not a  
8 communication, yes.

9 A I don't understand what that means.

10 Q If you spoke to him -- Assly, my dep -- if you  
11 spoke to him and you talked with him, don't tell me  
12 about the conversation. But I want to know how it was  
13 calculated, how it was transferred, when you authorized  
14 it, everything else.

15 A There was no calculation.

16 Q Who came up with the \$2,500?

17 A He did.

18 Q What does it represent?

19 A I don't know. A draw.

20 Q What does "a draw" mean?

21 A It's a draw. I don't know.

22 Q What does that mean? Tell me what it is.

23 A Apparently it's where you write yourself a  
24 check against monies owed.

25 Q So was that money for attorney's fees that you

1 had incurred?

2 A No.

3 Q So why would Mr. Lybarger get \$2,500 as a  
4 draw?

5 A I don't know.

6 Q Was he a member of the NI Housing, LLC -- or,  
7 NI Holdings, LLC -- excuse me -- the NI Holdings, LLC,  
8 that you owned, was he a member?

9 A No.

10 Q What was he getting a draw for?

11 A I don't know.

12 Q When did you give him this draw?

13 A I'm not sure.

14 Q Did you talk to him about the draw?

15 I'm going to push the limits on this one, and  
16 here's the reason. Because if it's not for attorney's  
17 fees, it's not for representation. If it's a draw,  
18 he's talking about taking money from the  
19 Name Intelligence funds. And if we want to talk about  
20 this off the record, I'm fine, but I am going to push  
21 this.

22 MS. SAYYAR: So your question is exactly what?

23 MR. GARDINER: It's, what did you talk to him  
24 about the draw? I'm not talking to him about  
25 attorney's fees or representation. I'm asking him

1 about the draw. If that's a business deal, that's not  
2 representation.

3 MS. SAYYAR: But if it isn't a business deal  
4 and it has something to do with this venture, which I  
5 think Charles Lybarger was a Defendant at one point in  
6 time, then it is covered by attorney/client privilege,  
7 and I will have to instruct him not to answer.

8 MR. GARDINER: No, no, no. You're saying that  
9 because he was a Defendant, then -- I want to know what  
10 this draw is, what it's for, how it was talked about.  
11 If it's for attorney's fees, then money was taken from  
12 Name Intelligence to pay for attorney's fees.

13 MS. SAYYAR: Which he's already answered as  
14 "no."

15 MR. GARDINER: Okay. So then I want to --

16 MS. SAYYAR: His other answer is, "I don't  
17 know." And if you want me to go outside and talk to  
18 him off the record confidentially for him to give me  
19 whatever the attorney/client privilege is so I can  
20 respond to your request, I will. But right now your  
21 question, I think, goes over the privilege line which  
22 we are not prepared to waive right now.

23 MR. GARDINER: Okay. So, five minutes.  
24 Please talk to your client about it.

25 MS. SAYYAR: Thank you.

1 (Recess)

2 MS. SAYYAR: Back on the record.

3 While we were off the record with the  
4 permission of counsel, I spoke with Jeff about the  
5 conversation that was being inquired in the question to  
6 determine whether it was or was not covered by  
7 privilege. After listening and speaking to my client  
8 in confidence, I believe it was covered by privilege.  
9 However, my client is willing to waive the  
10 attorney/client privilege for this one conversation  
11 which happens to deal with two draws, a \$2,500  
12 mentioned in our interrogatory answers, and the \$6,800.  
13 We are willing, only upon stipulation of all counsel,  
14 to waive that privilege for this lawsuit and for that  
15 conversation only, no other communications of any kind  
16 at this point in time. If that's agreeable, we will  
17 waive the privilege on those terms. If it's not  
18 agreeable, we have to assert the privilege. What would  
19 you like to do?

20 MR. GARDINER: Fine with me. That's what I  
21 want to know about.

22 MR. KEIM: I'm agreeable.

23 MR. SMITH: Yeah, I don't have any problem  
24 with that.

25 MS. SAYYAR: All right. You can now answer



1 the question about the conversation.

2 THE WITNESS: All right. Ask it again.

3 MR. GARDINER: Okay. So I was going to get to  
4 the second draw.

5 MS. SAYYAR: I figure we'd just get to it now.

6 MR. GARDINER: Yeah.

7 BY MR. GARDINER:

8 Q So there are two draws, 2,500, 6,800. 2,500  
9 goes to Lybarger. 6,800 goes to you. Where did that  
10 come from?

11 A The air. It came from the air. I was  
12 dropping off some paperwork. He says, "Hey, I feel  
13 comfortable taking a draw. How much do you want?"

14 Q From the air?

15 A The air.

16 Q From the air, like A-I-R?

17 A Yes, A-I-R.

18 Q Okay. Why was he getting a draw?

19 A I don't know. I'm not an attorney.

20 Q But he just said to you, "I feel comfortable  
21 taking a draw, and how much do you want"?

22 A Yeah.

23 Q When did this happen?

24 A I don't know. I mean --

25 Q After you had retained him?

1 A Obviously.

2 Q How much longer?

3 A Probably 30 days in. I don't -- I couldn't  
4 tell you for sure.

5 Q Was it after you had purchased the final three  
6 properties or before?

7 A I don't know.

8 Q Was it closer to August?

9 A I really -- I don't have any idea when it was.

10 Q And you had just driven to his office to --

11 A Drop off paperwork.

12 Q Okay. And in the midst of that conversation  
13 of dropping off the paperwork, this came up. Did you  
14 bring this up?

15 A No.

16 Q The attorney, Mr. Lybarger, brought this up?

17 A Uh-huh.

18 Q Had Mr. McKinnon brought this up with him?

19 A He wasn't even there, or aware of it.

20 Q He was aware of it?

21 A Was not.

22 Q Was Mr. Westerdal aware of it?

23 A Not that I know of.

24 Q Did he tell you why he felt comfortable taking  
25 a draw?

1           A     No. It was a very short conversation. That  
2 was it.

3           Q     Did he cut you a check from his trust account?

4           A     I assume so.

5           Q     Was it a check from him?

6           A     I couldn't tell you at this point. I'd have  
7 to look at the check.

8           Q     Were there any discussions on how it was  
9 calculated?

10          A     No.

11          Q     Was Mr. Lybarger involved, other than advising  
12 you as an attorney -- and I don't want those  
13 communications -- was he involved at all in the real  
14 estate venture?

15          A     No.

16          Q     I don't have any more questions on that  
17 specific issue. I think there are a lot of questions,  
18 but those are a lot of new ones.

19                The NI Holdings had a bank account that you  
20 opened up, correct?

21          A     Yes, sir.

22          Q     Was there more than one bank account?

23          A     Yes.

24          Q     Where were the bank accounts?

25          A     Wells Fargo.